IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2349 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL RAMESHBHAI SHANABHAI

Versus

AGRICULTURAL PRODUCE MARKET COMMITTEE

Appearance:

MR YN OZA for Petitioner

MR HARIN P RAVAL for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 16/02/2001

ORAL JUDGEMENT

The present petition is filed by the petitioner challenging the appointment of respondent no.3 as Secretary, Agricultural Produce Market Committee, Umreth

("APMC, Umreth" for brevity). The case of the petitioner is that the appointment in question is made in violation of the service rules framed by the APMC under section 17 of the Agricultural Produce Market Committee Act, 1963. The case of the petitioner is that the petitioner has submitted application on 30.1.1987 for the post of Secretary in the APMC, Umreth, in response to an advertisement appeared in 'Naya Padkar' newspaper in January 1987. The petitioner appeared in the interview for the above post held on 7.3.1989. It is further the case of the petitioner that the petitioner was placed at serial no.3 in the select list. As the persons who were placed at serial nos.1 and 2 refused to accept the offer of appointment, the petitioner ought to have been appointed on the post of Secretary, APMC, Umreth.

2. The petitioner contended that respondent no.3 was appointed on the post of Secretary with effect from 1.7.1989 though he did not possess requisite qualifications. According to the petitioner the qualifications required for the post of APMC, Umreth are; graduate either in science, agriculture, commerce or arts with economics. Respondent no.3, who was appointed does not possess the said qualification, but he is only a matriculate. As against that the petitioner herein is graduate having experience of 7 years which is required for the post of Secretary.

3. The petitioner has stated in para 5 that respondent no.2, Director of Agricultural Marketing and Finance, Gujarat State, who is the State authority has not given confirmation to the aforesaid appointment, but still respondent no.3 continues to serve as Secretary of respondent no.1 Committee in gross violation of service rules. The petitioner has prayed in that para that respondent no.2 be directed to take appropriate action against respondent no.1 and also to remove respondent no.3 from the post of Secretary of APMC, Umreth.

4. The present petition is filed for a writ of mandamus and it is prayed that a writ, order or direction in the nature of mandamus be issued quashing and setting aside the appointment of respondent no.3 as Secretary of APMC, Umreth. It is further prayed that a writ of mandamus may also be issued directing respondent no.1-- Committee to appoint the petitioner on the post of Secretary of APMC. It is further prayed that a writ of mandamus be issued directing respondent no.2 to take appropriate action against respondent no.1-- Committee and that respondent no.1 be directed to remove respondent no.3 from the post of Secretary.

5. While praying for interim relief it is prayed that respondent no.1 be restrained from allowing respondent no.3 to serve as Secretary, APMC and to direct respondent no.1 to appoint the petitioner as Secretary of APMC.

6. When it is put to learned advocate appearing for the petitioner as to whether he has approached respondent no.2 for reliefs as prayed for in the petition, learned counsel could not point out anything in the petition not even an averment to the effect, that he had approached the authority against whom writ of mandamus is prayed for. In absence of the petitioner having moved the authority it will not be proper for this Court to issue writ. It may also be noted that while the matter was admitted by this Court on 19.12.1991, interim relief was not granted at that stage. After the petition was filed in the year 1990, though interim relief was not granted, no application is found on record to have been moved for early hearing of the petition.

7. In the circumstances this Court does not find it proper to exercise its discretion under Article 226 in favour of the petitioner, who does not satisfy the conditions precedent for the same. Therefore, the petition is rejected. Rule is discharged with no order as to costs. However, it is made clear that if the petitioner was dismissed he may approach respondent no.2 for appropriate reliefs.

(Ravi R. Tripathi, J.)

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